

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:06CV207-01-MU

VENTURA GARCIA OLVERA,)
)
Plaintiff,)
)
v.)
)
UNITED STATES MARSHAL SERVICE)
and McDOWELL COUNTY JAIL,)
)
Defendants.)
_____)

ORDER

THIS MATTER comes before the Court for initial review of Plaintiff's Complaint,¹ filed July 7, 2006.

In his Complaint Plaintiff summarily alleges that a correctional officer at the McDowell county Jail removed him from his cell and assaulted him causing him to suffer serious lower back injury.

Plaintiff names the McDowell County Jail as a party. A county jail is not a proper party to a §1983 claim. Moreover, to the extent Plaintiff is attempting to sue the County he must allege that his injury was caused by the execution of a municipal custom or policy. Monell v. Department of Social Services, 436 U.S. 658, 694 (1978). Plaintiff does not allege that he was beaten pursuant to a custom or policy. Consequently, the McDowell County Jail is dismissed from this case.

¹ Plaintiff does not specify under what authority he is asserting his claim. To the extent Plaintiff is asserting a claim against a possible state actor, this Court will construe his claim as one pursuant to 42 U.S.C. § 1983. To the extent Plaintiff is asserting a claim against a possible federal actor, this Court will construe his claim as one pursuant to 28 U.S.C. § 1331.

Nor does Plaintiff state a claim against the other named defendant – the United Marshals Service. This Court recognizes that federal courts have the power under 28 U.S.C. § 1331 to award damages occasioned by infringements by federal officials of constitutionally protected interests. See Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971). However, neither the Federal Government nor one of its agencies is a proper defendant in a Bivens suit. See Radin v. United States, 699 F.2d 681, 684 (4th Cir. 1983)(Bivens recognized action against federal officers sued in individual capacities, but not against the United States). Consequently, Plaintiff has failed to state a claim against this Defendant as well.

IT IS THEREFORE ORDERED THAT Plaintiff's Complaint is dismissed.

Signed: July 17, 2006

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

